IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 1799 of 2006
Date of Decision: September 25, 2006

Pawan Kumar ..... Petitioner

versus

State of Punjab and others ..... Respondents

PRESENT:- Shri S.S. Garg, Advocate for the petitioner.

Shri Sushant Maini, Deputy Advocate General, Punjab for the State – respondent No.1

Shri R.S. Bains, Advocate for respondent No.2

Shri D.S. Patwalia with
Shri Sumeet Sheokand, Advocates for respondent No.3

HEMANT GUPTA, J.

The claim of the petitioner in the present writ petition is for admission to MBBS course on the basis of Punjab Medical Entrance Test-2005 (in short " PMET-2005") for the academic year 2005-06.

The State of Punjab for the purpose of admission to MBBS / BDS and other related courses issued a notification dated 25.4.2005 for admission to all the Medical / Dental Colleges in the State of Punjab on the basis of PMET-2005 to be conducted by Baba Farid University of Health Sciences, Faridkot (hereinafter to be referred as "the University"). The petitioner secured 64.25% marks. On the basis of the rank obtained by the petitioner, a Scheduled Caste candidate, his name was recommended for admission of MBBS course and forwarded by the

University to the Christian Medical College and Hospital, Ludhiana, respondent No.3 (hereinafter to be referred as “the college”), against State Quota seat.

The total seats for MBBS course with the respondent college is 50. There was a dispute regarding the right of the State Government in respect of admission in the said college which is a minority institute. Hon'ble Supreme Court in a Special Leave Petition filed by the college by virtue of interim order dated 1.6.2005 has permitted the State to fill up 25% seats by the State Government. In pursuance of the said order, the college has communicated on 18.07.2005that the State Government can fill 12 seats for MBBS course out of State Quota.

After the result of PMET-2005 was finally declared on 29.08.2005 after the same was earlier set aside by this Court, first counselling for MBBS course was scheduled to be held from 9.9.2005 to 11.09.2005. The University vide Annexure R3/1 recommended 7 candidates for admission to MBBS course in the said college as general category candidates. The names of other four candidates, including the petitioner as Scheduled Caste candidate, were recommended for admission. A combined list of 11 candidates was sent by the University to the college on 13/15.9.2005, a copy of which has been attached as Annexure P-1. It is the case of the petitioner that he went to the college for deposit of fees but fees was not accepted and the University accepted the fees of Rs.75,000/- as determined by the State Government on 17.09.2005. After the receipt of fees by the University, a communication was sent to the college on 26.09.2005, Annexure P-4, wherein the college was informed that the candidates selected by a duly constituted Committee against the State Quota

of MBBS seats have been sent to them and the fees submitted by them have already been sent to the college. The college was requested by the University that such candidates selected against the State Quota be permitted to attend their classes. Since the petitioner was not permitted to attend the classes in spite of deposit of fees, he invoked the jurisdiction of this Court in a writ petition filed on 2.2.2006. It has been pointed out by the petitioner that the college has admitted respondents No.5 to 16 in its counselling on 26/27.9.2005 although the said candidates were outside PMET-2005 merit list. Still further, it has been pointed out that a Division Bench of this Court in Civil Writ Petition No. 15670 of 2005 titled **Vikram Singla and others vs. State of Punjab and others,** decided on 4.1.2006, the stand of the college that they have a right to fill up seats so allocated to the State Government as part of the management seats has not found favour. In the said judgment, it was held as under:-

> " In view of the law discussed above, we also hereby direct the CMC to grant the petitioners admission to MBBS course during the academic year 2006-2007, this would be in accordance with the directions of the Hon'ble Supreme Court in Mridul Dhar's case (supra), and not contrary to the law laid down in **P.A. Inamdar's case** (supra). Admission of the petitioners would be counted against the management quota seats because the management has intentionally exceeded its quota in the current academic year i.e. 2005-06 and therefore, the admission of these petitioners in the MBBS course in the academic year 2006-2007 would be an answer to the enjoyment of excess quota by the management this year.
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> The CMC has failed to follow the rules and regulations, they have denied admission to the meritorious students, they have read the judgment of the

Hon'ble Supreme Court in Mridul Dhar's case selectively in order to achieve their objective, they have acted contrary to the directions of the Hon'ble Supreme Court in the order dated 1.6.2005, they have applied the judgment of P.A. Inamdar's case retrospectively (while it was applicable with effect from the academic year 2006-2007). The CMC has acted blatantly in defiance of the law. Therefore, the CMC is also fined with a sum of Rs.2 lacs for adopting a defiant posture and for acting contrary to the rights and duties of the deserving students.

We also must express our regret for the MCI. They have only pleaded that the cut off date for admission i.e. 30.9.2005 is mandatory. They have not assisted the Court to give its view point on the facts and circumstances of this case i.e. the affect of non-adherence of the time schedule relating to holding of 1st counselling and 2nd counselling by the State of Punjab in the facts and circumstances of this case. It has also not expressed its viewpoint, whether or not observance of the time schedule relating to these dates amounted to conversion of State quota seats into the management quota seats. It clearly means that the MCI, which is the regulatory body of medical courses, has no clear vision of the subject. The MCI ought to have come out with its viewpoint to meet such like eventualities and, form guidelines for States, Universities and private colleges.

Accordingly, this writ petition stands allowed in the following terms :-

1) The admission of the private respondents to the MBBS course at the CMC for the academic year 2005-06 is protected.
2) The petitioners cannot be granted admission in MBBS classes in the current academic year after 30.9.2005, as their admission would be a midstream admission which has been prohibited by the Hon'ble Supreme

Court.

3) The petitioners will be admitted to the MBBS course at the CMC for the academic session 2006-2007 against the management quota seats in terms of the directive contained in para 35 (11) of Mridul Dhar's judgment, as it has exceeded its quota during the academic year 2005-2006.

4) The CMC would compensate each of the petitioners with an amount of Rs.2 lacs each for the loss of one year, for the mental tension and for economic loss caused to them.

5) The CMC is burdened with the costs of Rs.2 lacs to be deposited with the Baba Farid University of Health Sciences, Faridkot, within 3 months from today, for being utilized towards students welfare fund".

Therefore, the petitioner claims that he is entitled to be admitted against the State Quota seats on the basis of PMET-2005 against the seats meant for 2005-06. It may be noticed that the name of the petitioner was recommended in the first counselling held from 9.9.2005 to 11.09.2005 whereas the petitioner in **Vikram Singla's case (supra)** was the one whose name was recommended against the State Government seats in the second counselling held on 24.09.2005. In other words, the petitioner is higher in merit than the petitioners in **Vikram Singla's case (supra).**

Learned counsel for the respondent-college has raised three fold arguments. Firstly, it is argued that the writ petition has been filed after much delay on 2.2.2006 whereas the cut off date for admission, in view of the decision of the Supreme Court as **Mridul Dhar (minor) and another vs. Union of India and others, (2005) 2 SCC 65,** is September 30 of every year. Therefore, the writ petition which has been filed after cut off date and, in fact, after the decision of the Division Bench in **Vivek**

Singla's case (supra) suffers from gross delay and, therefore, the petitioner is not entitled to any equitable relief from this Court. It is further argued that the petitioner has claimed admission to MBBS course for the academic session 2005-06 whereas such relief cannot be granted in view of decision of the Supreme Court in **Mridul Dhar's case (supra).** Since the petitioner has not claimed admission for academic session 2006-07, this Court will not grant relief which is not claimed by the petitioner.

After hearing learned counsel for the parties, I do not find any merit in any of the arguments raised by learned counsel for the respondents. It is admitted by the learned counsel for the respondents that the judgment of Division Bench of this Court in **Vivek Singla's case (supra)** has attained finality and out of six candidates who were required to be admitted in pursuance of the said judgment, only four students have sought admission and have been granted admission in the MBBS course. Such admission has been granted obviously after 4.1.2006 in the current academic session 2006-07. Such candidates who have been admitted are lower in merit than the petitioner whose name was recommended in the first counselling. Therefore, the question of delay sought to be raised by the respondents loses significance when the students in pursuance of the directions have been admitted much later than September 30, 2005 for the current academic session. Similarly, the argument that the petitioner has sought admission for the academic session 2005-06 is again devoid of merit. A Division Bench of this Court moulded the relief in favour of the candidate in view of the facts proved on record and to settle equities, this Court directed the college to admit the students in the current academic session i.e. 2006-2007. Therefore, this Court has a right to mould the relief to which the

petitioner is found entitled to in the facts of the case.

In view of the above, while allowing the writ petition filed by the petitioner, Christian Medical College is directed to admit the petitioner to MBBS course for the academic session 2006-07 against management seats in terms of the directive contained in Para 35(11) of Mridul Dhar's judgment, as it has exceeded its quota during the academic year 2005-2006.

A copy of the order be given Dasti on payment of usual charges.

September 25, 2006 (HEMANT GUPTA)
ks JUDGE